



LAWRENCE S. LUSTBERG  
Director

Gibbons P.C.  
One Gateway Center  
Newark, New Jersey 07102-5310  
Direct: (973) 596-4731 Fax: (973) 639-6285  
llustberg@gibbonslaw.com

April 26, 2011

**VIA ECF AND FACSIMILE**

The Honorable Claire C. Cecchi, U.S.M.J.  
United States District Court  
for the District of New Jersey  
King Fed. Bldg. & U.S. Courthouse  
50 Walnut Street, P.O. Box 999  
Newark, New Jersey 07101

**Re: *United States ex rel. Laurie Simpson v. Bayer Corporation, et al.***  
**Civil Action No.: 05-3895 (JLL)(CCC)**

Dear Judge Cecchi:

This firm, along with Sidley Austin LLP, represents Defendants Bayer Corporation, Bayer HealthCare Pharmaceuticals, Inc., and Bayer HealthCare LLC (collectively referred to as "Bayer" or "Defendants") in the above-referenced matter.<sup>1</sup> Under the most recent Scheduling Order, see ECF No. 48, Plaintiff/Relator was required to file her Fourth Amended Complaint on or before April 1, 2011. Defendants were then to have "sixty (60) days from the date of filing the Fourth Amended Complaint" to file an answer, motion, or other pleading in response. ECF No. 48.

As of this date, Bayer has not been served with the Fourth Amended Complaint. We understand from a discussion with Relator's counsel, however, that a Fourth Amended Complaint was filed on April 1, but that it was filed under seal. Due to this sealing, Relator's counsel was unwilling to elaborate any further as to the nature of the filing, the seal or other matters pertaining to the filing, a position Defendants respect.

Relator's filing raises two concerns, however, which we believe can be addressed through this informal communication. The first is that under a literal reading of the Scheduling Order, the time for Bayer to file an answer, motion or other pleading is running even though we have not seen the pleading. This was not the intent of the parties. We suggest that the time for Bayer's response to the Fourth Amended Complaint should begin to run when, and if, it is unsealed and served on defendants.

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<sup>1</sup> Other corporate affiliates of the entities bringing this application have been named as defendants in this action, but this motion is brought only by Bayer Corporation, Bayer HealthCare Pharmaceuticals, Inc., and Bayer HealthCare LLC. Bayer AG and Bayer Schering Pharma AG, named defendants, have not yet been served. Bayer Pharmaceuticals Corporation, also a named defendant, merged into Bayer HealthCare Pharmaceuticals, Inc. as of January 1, 2008, and no longer exists as a separate entity. Bayer HealthCare AG, the remaining named defendant, was merged with and into Bayer Schering Pharma AG as of December 30, 2008, upon which Bayer HealthCare AG ceased to exist and Bayer Schering Pharma AG assumed all liabilities and functions of Bayer HealthCare AG, including those related to Trasyolol.

GIBBONS P.C.

The Honorable Claire C. Cecchi, U.S.M.J.  
April 26, 2011  
Page 2

The second concern Relator's filing raises is that it may possibly affect Bayer's substantive rights. Bayer has reason to believe that the Fourth Amended Complaint may include allegations or claims made by another relator whose complaint remains under seal. If the Fourth Amended Complaint does in fact include an attempt to consolidate the above-captioned case with another, Bayer wishes to be heard on that subject before the Court rules. The reason for this request is that Bayer believes that consolidation or some attempt to combine these actions may result in undue prejudice to Defendants and would otherwise be improper.

The fact that the Fourth Amended Complaint, if in fact on file, is sealed prevents Bayer from responding further at this time. Bayer therefore requests that the time for responding to the Fourth Amended Complaint be suspended until it is served and that Defendants' sixty (60) days for responding to that pleading begin to run from the date of service. In addition, Bayer requests that no action be taken by the Court with regard to any consolidation or other procedural device until Defendants may be heard.

Thank you for your consideration.

Respectfully submitted,

s/ Lawrence S. Lustberg  
Lawrence S. Lustberg

LSL/jmt

cc: Counsel of Record (*via ECF*)